IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1263 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO.LTD.
Versus
BHANUMATIBEN RAMSINH PARMAR AND OTHERS

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Appearance :
MR RAJNI H MEHTA for Appellant.
MR VG DAVE for MR YOGESH S LAKHANI for Respondent Nos.1-3.
NOTICE SERVED for Respondent No.4.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 22/11/2007

ORAL JUDGMENT

1. The Oriental Insurance Company Limited has preferred the present appeal from judgment and award dated 18-4-1992 of the Motor Accident Claims Tribunal (Special) Porbandar in MACP No.177/1991, whereby respondent nos.1 to 3 herein were awarded, by way of compensation,

Rs.4,65,000/- with interest and cost. The factual background of the case of the claimants was that the deceased, while serving as a Sub Inspector, was transferred to Ahmedabad due to which he was carrying his household goods by paying fare of Rs.500/- in the truck which met with accident on 4-11-1991. After recording evidence and noting the fact that the deceased was not a gratuitous passenger, the tribunal was pleased to award compensation as aforesaid.

2. The appeal was pressed by the insurance company only on the ground that the policy taken by the owner of the vehicle did not cover risk to the passenger carried in the goods vehicle, which was insured. Learned senior counsel, Mr.Rajni Mehta, submitted that the issue arising in this appeal was squarely covered by the judgment of the Supreme Court in **New India Assurance Company Limited Vs. Asha Rani and Others (2003 ACJ 1)**. It is held therein that the insurer will not be liable for paying compensation to the owner of goods or his authorized representative on being carried in a goods vehicle when the vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.

3. Learned counsel, Mr.V.G.Dave appearing with Mr.Y.S.Lakhani for the original claimants, respondent nos.1 to 3, fairly conceded that the accident in the present case having occurred before the amendment of 1994 in the Motor Vehicles Act, 1988 the issue was covered by the aforesaid judgment and hence, insurance company cannot be held to be liable to satisfy the award made against the owner or driver of the vehicle. Therefore, the appeal is partly allowed with the direction that the impugned award shall stand set aside as far as the appellant insurance company is concerned. It is needless to clarify that the claimants shall be entitled to recover the amount of remaining

compensation from respondent no.4.

4. It was stated at the bar and submitted that a sum of Rs.5,07,440/- was deposited by the insurance company towards satisfaction of award and out of that amount Rs.1,50,000/- were ordered to be paid to the claimants with further payments of interest on the remaining amount, which was ordered to be invested in Fixed Deposit. Therefore, the appellant Insurance Company shall be entitled to recover from respondent no.4, the amounts paid so far to the original claimants under the orders of the tribunal or this Court and the amount now remaining invested in the Fixed Deposit shall be refunded to the appellant. The appeal accordingly stands allowed with no order as to costs.

(D.H.Waghela, J.)

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